

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

ALFRED HORNE

PLAINTIFF

VS.

CIVIL ACTION NO. 3:08-cv-739-WHB-LRA

BERNARD BOOTH, ET AL.

DEFENDANTS

OPINION AND ORDER

This cause is before the Court on the Report and Recommendation of United States Magistrate Judge Linda R. Anderson. After considering the Report and Recommendation¹ and the procedural history of the case, the Court finds the subject Report and Recommendation, to the extent it recommends dismissal of this case for lack of prosecution, should be adopted as the finding of this Court.

I. Discussion

On December 4, 2008, Plaintiff, Alfred Horne ("Horne"), filed a Complaint in this Court under 42 U.S.C. § 1983 alleging a claim of insufficient counsel.² On June 18, 2009, Judge Anderson entered

¹ The parties were required to file objections to Judge Anderson's Report and Recommendation on or before July 8, 2009. No objections to the Report and Recommendation were filed.

² As Horne is proceeding in this case *pro se*, the allegations in his pleadings have been liberally construed. See United States v. Wilkes, 20 F.3d 651, 653 (5th Cir. 1994). As Horne has alleged a claim arising under federal law, the Court may properly exercise subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331.

a Report and Recommendation ("R & R") recommending that the case be dismissed for lack of prosecution based on Horne's failure to: (1) respond to the Motions to Dismiss that were filed by Defendants David Sisk, Keith Denson, Greta Harris, and Alice Theresa Stamps; (2) provide addresses for having process served on several of the defendants named in the case; (3) respond to the Show Cause Orders that were entered on June 9, 2009; and (4) appear at the omnibus hearing that was scheduled on June 17, 2009. See R & R [Docket No. 31]. In the alternative, Judge Anderson recommended that the Motions of David Sisk, Keith Denson, Greta Harris, and Alice Theresa Stamps, be granted on the merits. Id.

After reviewing the R & R and the procedural history of this case as reflected on the Docket, the Court agrees that this case should be dismissed, without prejudice, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure based on Horne's failure to prosecute his claims. As such, the Court will adopt Judge Anderson's R & R to the extent it recommends dismissal pursuant to Rule 41(b).

For the foregoing reasons:

IT IS THEREFORE ORDERED that the June 18, 2009, Report and Recommendation of United States Magistrate Judge Linda R. Anderson [Docket No. 31], to the extent it recommends dismissal of this case without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure based on Plaintiff's failure prosecute his claims, is hereby adopted as the finding of this Court.

IT IS FURTHER ORDERED that the Motions to Dismiss filed by Defendants David Sisk, Keith Denson, Greta Harris, and Alice Theresa Stamps [Docket Nos. 20, 23, and 29] are hereby dismissed as moot.

A Final Judgment dismissing this case without prejudice for lack of prosecution shall be entered this day.

SO ORDERED this the 28 day of July, 2009.

s/ William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE